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Bill No. SB 224

SB 224 Testimony / BAJ

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Mr. Chairman:

As chief counsel for DPHHS, I am responsible for the department's rule making activities. When the rule-writing process begins at DPHHS we classify rule proposals as either "simple" or "complex".

Simple rules are those that are almost *pro forma* in nature. For example, after the 2011 session of the legislature, 13 rule changes were necessary because of budget changes that occurred in HB 2. We knew generally what rule changes were going to be needed and were able to do a significant bit of work on the pending rule proposals even before HB 2 was signed into law. As a result, the department filed its proposed rule notices with the Secretary of State on May 16, 2011, just 4 days after the Governor signed HB 2 into law.

Obviously, where these kinds of rules are concerned, the 120 day limit proposed in SB 224 will not be problematic for DPHHS.

Complex rules are a different matter. These rules are typically of interest to many different stakeholders, who usually have divergent viewpoints and concerns about the subject matter of the rules. In these instances, our practice at DPHHS is to involve these stakeholders as a rule proposal is being developed. Doing so has proven to be the best way to make the hearing and comment portion of rule-making most meaningful, because it ensures that interested parties are fully informed about the prospective rule before they write their comments or present their testimony prior to adoption.

An example of stakeholder involvement is reflected in a complex rule that is currently being prepared for filing by the department either late this month or in March. This rule proposes to update an existing rule which pertains to chemical dependency programs that the Department offers throughout the state. The stakeholders involved in developing this proposal included a tribal provider, 6 providers who work in Montana's more urban areas, 3 providers who provide services in less urban areas of the state, and one provider who represented the viewpoints of all the providers who work in the very rural areas of the state. These people have been working together with Department staff since mid-2011 on this project, and their efforts have now produced a 91 page rule proposal.

With a 120 day limit in place, I believe this kind of collaboration with stakeholders would not have been possible. And while I acknowledge that approximately 18 months of collaboration on a rule proposal like I described earlier is not typical, I am also comfortable informing you that very, very few collaborative efforts with stakeholders can be organized and completed within 120 days.

Complex bills constitute approximately half of the rules we propose each year. Just to create a bit of perspective, in 2010 we filed 33 rule proposals with the Secretary of State; in 2011 there were 38, and in 2012 there were 55. With this volume of rule work, and the trend line moving upward, I believe SB 224 would drastically reduce the opportunities the department might otherwise have to involve stakeholders in rule development, as I've described above.

For that reason, I urge the committee to reject SB 224.

Thank you, and I'll be available for questions.